

REMARKS

Claims 36-59 are withdrawn from consideration. Applicants have amended claims 1-37, 44, 45, and 60. Applicants have cancelled claims 38-43 and 47-59 without prejudice to their later prosecution in this or another application.

Applicants acknowledge, with appreciation, the Office's indication that claims 1-35 and 60 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph. Applicants also thank the Office for its careful reading of the withdrawn claims.

Upon entry of this amendment, Claims 1-37, 44-46, and 60 are pending.

Rejections under 35 U.S.C. § 112

Claims 1-35 and 60 are rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Office has expressed concerns regarding the phrase "or form thereof". Although Applicants believe that phrase is defined in the specification and is not indefinite, Applicants have amended the claims herein to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments. Applicants request that the rejection be withdrawn.

Specification

Applicants thank the Examiner for holding the objection to the title in abeyance until such time as the claims are indicated as being in allowable form. Applicants have amended the title herein. Applicants request that the objection be withdrawn.

Information Disclosure Statement

The Office has "lined through" and not initialed Applicants' listing of search reports and written opinions on the IDS Forms PTO-1449 returned with the current

Office Action, stating that they have not been considered because they “are not prior art.”

As an initial matter, Applicants note that material information “is not limited to prior art but embraces any information that a reasonable examiner would be substantially likely to consider important in deciding whether to allow an application to issue as a patent.” M.P.E.P. § 2001.04 (emphasis in original).

In addition, Applicants note that 37 C.F.R. § 1.98 provides for the listing of “other information” and for submitting legible copies of such listed information. According to M.P.E.P. § 609, once the minimum requirements of 37 C.F.R. §§ 1.97 and 1.98 are met, the Office has an obligation to consider the information.

Finally, as the Office acknowledges, the submission of a document in an IDS does not constitute an admission or representation that each or all of the listed documents constitute “prior art.” The Office, however, has an obligation to consider the relevance of all information submitted by Applicants as set forth in M.P.E.P. § 609. If the Office has a different understanding of that section of the M.P.E.P., Applicants would appreciate citation to a rule or regulation supporting that different understanding.

Applicants listed and submitted the search reports and written opinions in an abundance of caution in order to allow the Office to consider whether they are material to patentability in accordance with the United States Court of Appeals for the Federal Circuit’s holding in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358 (Fed. Cir. 2003). In *Dayco*, the Court held that an “adverse decision” by another examiner may meet the materiality standard under amended 37 C.F.R. § 1.56 and, thus, applicants should disclose prior rejections of “substantially similar claim[s]” to the Office.

Accordingly, although Applicants are not representing that the copending applications are material to the present application and are not admitting that any of the claims in the copending applications are substantially similar, out of an abundance of caution, Applicants listed the search reports and the written opinions on the IDS Forms PTO-1449 and submitted copies therewith pursuant to the above-cited sections of the Rules and M.P.E.P. Applicants therefore respectfully request that the Office consider

the cited documents and indicate that they were so considered as the M.P.E.P. dictates. For the Office's convenience, Applicants relist the Office Actions previously crossed out by the Office on the concurrently-filed PTO-1449.

CONCLUSION


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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